



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002008

First-tier Tribunal No: HU/55397/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 23rd of October 2024

Before

UPPER TRIBUNAL JUDGE MEAH

Between

Goma Pant
(ANONYMITY ORDER NOT MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr M Foxley, Counsel, instructed via Direct Access

For the Respondent: Mr M Parvar, Senior Home Office Presenting Officer

Heard at Field House on 21 October 2024

DECISION AND REASONS

Introduction and Background

1. The appellant, born on 02 November 1966, appeals against the decision of First-tier Tribunal Judge Mills (FtJ) on 14 February 2024 ("the decision"). By the decision, the FtJ dismissed the appellant's appeal against the respondent's decision dated 29 March 2023, refusing her application for entry clearance as an adult dependent relative of her son, a Mr Ravi Sharma, the UK sponsor in this matter.

The Grounds

2. The grounds raised challenging the decision are that the FtTJ erred in his assessment of the evidence, he failed to consider the evidence in the round and he made findings and inferences of fact based on a view the evidence that could not reasonably be held.
3. Permission to appeal was granted by Upper Tribunal Judge Rastogi on 06 August 2024, in the following terms:

“1. The appellant applies for permission to appeal the decision of First-tier Tribunal Judge Mills (“the judge”) dated 14 February 2024 dismissing the appellant’s appeal (“the decision”) against the refusal of her human rights’ claim.

2. Whilst this is a borderline decision, it is arguable that the judge found, against the weight of the evidence, that the appellant’s neighbour could be paid for and continue to care for the appellant [26].

3. It is arguable that the above infected the judge’s finding that there was a suitable package of care available for the appellant in Nepal which included reference to ongoing support by the neighbour [36] and is therefore material to the overall decision.

4. The grounds disclose an arguable material error of law but it remains the responsibility of the appellant to identify with concision and focus the material errors of law and to satisfy the Upper Tribunal of materiality.....”

4. There was no Rule 24 response from the respondent.
5. That is the basis on which this appeal came before the Upper Tribunal.

Submissions

6. Both representatives made submissions which I have taken into account and these are set out in the Record of Proceedings and need not be repeated here.

Discussion and Conclusions

7. Following preliminary discussions at the outset of the hearing, Mr Parvar stated that the respondent conceded the grounds of challenge and accepted the errors highlighted therein. This was primarily on the basis that the assessment of alternative care was based entirely on speculation by the FtTJ at [26] and [27] which was not put to the sponsor during the hearing, and there was nothing noted in the sponsor’s witness statement regarding the appellant’s neighbour either being able to provide long term care, or that she would or could be persuaded to provide such long term care if she was paid. I am satisfied that the FtTJ materially erred by speculating on these core elements such that the entire decision is vitiated by a material error of law.
8. I am satisfied, therefore, that Mr Parvar’s concession was fairly and sensibly made. I informed the parties that I did not seek to go behind the respondent’s

concession, and I accept that there were material errors of law in the FtTJ's decision as argued in the grounds seeking permission.

9. I therefore set aside the decision of the FtTJ.

10. Accordingly, in applying **AEB [2022] EWCA Civ 1512** and **Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC)**, I have considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statement. I consider, however, that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process.

Notice of Decision

11. The decision of the FtTJ sent to the parties on 14 February 2024, involved the making of a material error of law. It is set aside in its entirety.

12. The appeal is remitted back to the First-tier Tribunal at Nottingham to be heard by any FtTJ other than FtTJ Mills.

S Meah
Judge of the Upper Tribunal
Immigration and Asylum Chamber

22 October 2024